1944

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File No. B Irrigated Crops/44

Legal Deptt

B BRANCH

Subject:-

A Bill to Provide for the maximum cultivation of, and the maximum use of water in lands under commands of irrigation works in the Province of Bombay and for increased cultivation of food crops in such lands.

(Bom. XII of 1944)

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Gen. 194 e.

545-B

C O N T E N T S.

Legal Department File No. B. Irrigated Crops/44.

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30/7

Office of the R.L.A.

A revised draft Bill is sent herewith.

2. A long title has been given.

3. Clause 1 .- A short title has been slightly altered to "the Bombay Irrigated Crop Regulation Act, 1943," since regulation is a wider term than control.

4. Clause 2.- Since the last clause in the definition provides for words and expressions not defined having the meanings assigned to them in the Bombay Irrigation Act, the definition of the "Canal Officer" is unnecessary and has been omitted. In the definition of irrigation work the words "an irrigation work" and the words "or part thereof" have been omitted as being unnecessary. The R.D. Draft clause 3 provides that the Commissioner is to direct the preparation of the scheme in the case of lands in respect of which water assessment is already leviable. The definition has therefore been restricted to a canal as defined in the Bombay Irrigation Act, 1879, in respect of the use of water from which a rate is leviable under the said Act, so as to apply only to P.W.D. irrigation works; and reference to tanks etc. has been omitted in view of the definition of the word "canal" in the Irrigation Act. The definition of "land under command" has been made more precise by reference to section 4(1)(iii) under which the officer preparing the scheme specifies the details of such land.

5. Clause 3 in the R.D; draft has been split up into two clauses 3 and 4.

Clause 3 in the revised draft.- It is not usual to refer to the preamble in the body of the Act. The purposes have therefore been specified in the clause. Provision is also made for the Commissioner to fix a period of enforcement in relation to which a scheme shall be prepared.

Clause 4 in the revised draft.- The particulars to be entered in the scheme have been made more precise and the latest dated before which water shall begin to be taken from the irrigation work and that before which the Schedule

crops shall be sown in certain lands have been shown as separate particulars. The note in R.D. draft clause 3 has been made into a separate sub-clause (2)-

A new provision has been inserted in revised clause 4(1) as it is necessary to provide that the officer directed by the Commissioner shall prepare a scheme accordingly.

6. A new clause 5 has been inserted to provide that the Commissioner may sanction the scheme with or without modifications.

7. Clause 6 corresponds to clause 4 in the R.D. draft. It is provided in clause 6(2) that irrigation and cultivation of all lands under command shall be carried out in accordance with the scheme for the period during which the scheme is in force.

8. Clause 7 corresponds to clause 5 in the R.D. draft. The clause has been slightly recast to provide for the notice specifying the survey numbers which are decided as comprising the land under command of the irrigation work specified in the scheme requiring the water shall begin to be taken and the crops sown before the respective dates appointed therefor under section 4. It is not clear from R.D. draft clause 5 whether the notice to be given by the officer preparing the scheme is to be served on owners of land individually or generally. In view of the definition of the word "owner" including a holder, a tenant, a mortgagee in possession etc. it may not be feasible to issue notices on owners individually. If individual service of notice were prescribed, it may also cause difficulties as it would be necessary to secertain correctly who is the owner in each case. Otherwise the service of a notice on a person who turns out not to be the owner will not bind the real owner. It would therefore be simpler to provide for a general notice.

9. Clause 8 and 9 correspond to clause 6 of the R.D. draft Clause 8 has been split up into 3 sub-clauses. R.D. draft clause 6 provides that on the default of any owner to take water or to sow scheduled crops the Commissioner may autho-

authorise some officer to enter upon and take possession of all the lands of such owner included in the scheme for such period as he may direct. It does not appear that it is the intention of Government after taking over possession of such land, to manage the lands as a manager or receiver and keep accounts or be accountable to the owner after the expiry of the period for which possession was taken. Nor does the taking possession of such land amount to forfeiture thereof, because the lands are to be taken possession of for a period to be directed by the Commissioner. The position therefore appears to be that the use of the lands is to be requisitioned for a certain period. Clause 8(1) therefore provides, on the lines of rule 75A(1), read with rule 119(1), of the Defence of India Rules, that on failure of the owner to begin to take water or to sow schedule crops, the Commissioner may, by order in writing served in the prescribed manner on the owner concerned, requisition all the lands of the owner included in the scheme for a period to be specified in the order for the purposes of the scheme and authorise an officer to enter upon and take possession of the said land. Sub-clause(2) then provides that the assessment under the Land Revenue Code and water rate under the Irrigation Act shall be adjusted in determining the amount of compensation and that the owner shall not be liable for the payment both of the assessment and water rate in respect of the period of the requisitioning. The R.D. draft proviso to clause 6 refers only to the exemption from the payment of water rate. It is presumed the owner is to be exempted from payment of assessment also. In any case the provision for adjusting these in determining compensation will leave no difficulty. Section 299(2) of the Government of India Act, 1935, provides that no law of Provincial Legislature shall authorise the compulsory acquisition for public purposes of any land, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which it is to be determined. Under sub-section(5) of the said section land includes any rights in or over land. The re-

requisitioning of any land even for a specified period will therefore amount to acquisition within the meaning of section 299(2) and it is necessary to provide for payment of compensation. A new provision has therefore been inserted as sub-clause (3) of clause 8 on the lines of section 19(1) of the Defence of India Act, 1939; R.D. is requested to settle the details and complete the sub-clause accordingly.

10. Sub-clause (1) of clause 9 provides that the Commissioner may use such lands in such manner as may appear to him to be expedient for the purposes of the scheme. This will enable him to let it out for cultivation and the provision in that behalf in the R.D. draft clause 6 has been cut out.

A new clause 9(2) has been inserted to provide for the recovery of costs of the construction or repair of any water work carried out by the Commissioner on any land for the purposes of the scheme from the owner as arrears of land revenue. (cf. Part III of the Bombay Irrigation Act, 1879). It is presumed such provision is intended.

11. A new clause 10 has been inserted giving power to the Commissioner to very the scheme. This is necessary provision has however, been made that no such variation shall be made without obtaining the consent of the owner of the land conferned. This is reasonable.

12. A new clause 11 has been inserted giving right of entry to person authorised by the Commissioner for perparing sanctioning or carrying out any scheme.

13. Clause 12 corresponds to R.D. clause 7.

14. Clause 13 corresponds to R.D. draft clause 8.

15. Clause 14 corresponds to R.D. draft clause 9. It is not clear to what provision in the Bill R.D. draft clause 9(2)(i) refers. It has therefore been omitted. The provision made in R.D. clause 9(2)(ii) in so far as it relates to matters for the purposes of the Act will be covered by the general provision made in clause 14(1) and in so far as it does not relate to purposes of the Act will be outside the scope of the Act. That provision has therefore been omitted.

16. A Schedule has been added at the end. R.D. is requested to fill it in.

17. The subject matter of the Bill falls under entries 2,9,19,20, 21 and 39 in the Provincial Legislative List in the ~~Sxx~~ Seventh Schedule to the Government of India Act, 1935. As none of the provisions of the Bill relates to any matter in the Concurrent Legislative List, it is not necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935, or para (2) pf the Proclamation.

Id/- P.N.M.

24/9

Remembrancer of Legal Affairs.

U.R. to R.D.No.6461, dated the 25th September 1943.

R.D.P.

12/7/56

5.C.

Office of the

I forward herewith a copy of the Bombay Irrigated Crop Regulation Bill and my note on clause 8 of the Bill as orginally drafted. Clause 8 has since been redraftedxwith a view to incorporatiing certain suggestions made by the adminstrative department and to emphasing that the temporary dispossession of land by way of penalty would attract the provisions of section 299(2) of the Government of India Act, 1935, and Government would in the circumstance be bound to provide for compensation, nominal though it may be.

for default. The main question, have however, is whether temporary dispossession of land by way of penalty

2. In my note I have taken the view that temporary dispossessio of land withxout compensation would run counter to the provisions of section 299(2) of the Government of India Act. Even under the Defence of India Rules whichis an emergement measure of the utmost importance, provision has been made in rule 96 for the grant of compensation in cases where an owner is forcibly evacuated or his property is requisitioned or made use of for defence or public purposes. The only difference is that dispossession under the Defence of India Rules is not by way of penalty as in the present case. It is also arguable that it would be somwhat anomalous to hold that while the more drastic penalty of forfeiture is permissible without compensation, the lesser penalty of temporary dispossession cannot be imposed without compensation. Nevertheless it seems to me doubtful if temporary dispossession by way of penalty falls outside the scope of section 299(2)of the Government of India Act.

3. The Advocate General is accordingly requested to advise whether or not clause 8 as now drafted is in conflict with the provisions of section 299(2)of the Government of India Act,. As the matter is very urgent Government would appreciate if the Advbcate General can give his opinion before he leaves for Delhi.

Sd/
Remembrancer of Legal Affairs.

U.R.to the Advocate General, Bombay.No.255-L.dated 20th October 1943.

M.R.D.
13-7-56
C.4

ADVOCATE GENERAL'S CHAMBER,
HIGH COURT,
Bombay, 27th October 1943.

My dear Moos,

I am sending my opinion in respect of Clause 8 of the Bill to provide for the maximum cultigation, etc. of lands under command of Irrigation Works. I have confined my opinion to the question asked. But while considering the matter, certain other aspects of the Bill seemed to me to require anxious consideration. Sub-Clauses(c)and(d) of Clause 7 compel the owner not only to take water for irrigation from a particular date but also to sow only particular kinds of crops and the penalty provided by Clause 8 is in respect of a breach of such a direction also. I trust Government have applied their mind to this point.

I have not before me Clause 8 as originally drafted. I wish it had been sent to me. However, as regards Clause 8 itself, the words "take over" do not appear to me to be an apt expression for the purpose intended. If forfeiture is intended to be effected, even though temporary, why is not the word used coupled with a provision that the land may be restored at any time thereafter in the discretion of the Government on proper assurance being given that the provisions of the Bill will be complied with thereafter by the owner, or on such other terms, if any, as the Government think fit? The words "take over" are capable of being construed as being not words depriving the owner of all rights therein, but depriving him of the right of managing and cultivating it. This contention derives support from the provisions of sub-Clause 4 of Clause 8. Where is the necessity of saying that the owner shall not be liable for the water rate, if the land has been forfeited to Govern-

to Government?

Yours sincerely,

Sd/-
27.10

I will discuss this on the Adv-Gen's return then.

M.R.D.
13-7-56
C.4

No.27 of 1943.

ADVOCATE GENERAL'S CHAMBER,
HIGH COURT,
Bombay 27th October 1943.

U.R.No.255 L dated 20th October 1943.

O P I N I O N.

Thequestion which I am asked to advise on is whether Clause 8 as now drafted of the Bill to provide for the maximum cultivation of and the maximum use of water in lands under command of Irrigation Works,etc. contravenes the provisions of Section 299(2)of the Government of India Act. I am of opinion that the provisions contained in Clause 8 of the Bill do not amount either to acquisition or requisition, and that Section 299(2)does not apply. It cannot be said that land or any rights in or over such land belonging to a subject is being acquired compulsorily for public purposes. I am of opinion that the provision in Clause 8 stands on the same footing as a provision for the forfeiture to Government of goods and articles in respect of which some offence has been committed or of land in respect of which there has occurrred a hbeach of a condition or covenant giving a right of reentry. I am of opinion that validity of clause 8 cannot be inpugned on the ground of its offending the provisions of Section 299(2) of the Government of India Act.

Sd/-
Advocate General
27/10

M.R.D.
13-7-56
C.4

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay 23rd November 1943.

U.R. No.255 L dated 20th October 1943.

SUPPLEMENTARY OPINION.

I have gone thorugh the papers again and have reconsidered the matter in all its aspects. In the opinion which I have on the 27th October 1943 I did not attach sufficient importance to the words in Clause 8 as now drafted, which made the land liable to be taken over for such period ifrespective of the period during which the scheme is in force as the Commissioner may direct. In my letter to Mr.P.N.Koos of the same date however I expressed a doubt as to whether thecwords"taken over" were an apt expression for the purpose intended which I assumed to be forfeiture. Forfeiture means the loss of all intenrest in the property spooken of. It is true that some times forfeiture may be a qualified one. As for instance in a building contradt a forfeiture of the contractors peroperty may be stipulated to be either an absolute transfer or a qualified one. That is to say either it may be provided in the contract that property which belongs to the contractor before the forfeiture is to become the property of the employer or it may be provied that the property of the contractor should be used, used up or retained as the case may be for the purpose of completing the contract. It has beeen held that unless there is some provision in the contractx which effectually dispenses with the employer's obligations to account, an employer entering and completing the work with the plant and materials of the contractor under a forfeiture clause must account to the contarctor for the plant and materials as well asthe

retention money. In Ranger Vs the Great Western Railway Co.5 H.L. Cases page 72- the provision in the contract was that on default all moneys then due or which would thereafter have become due to the contractor under the contract and all the tools and materials in and about the works were to become the absolute property of the company and there was a further provision that if the moneys tools and materials so become the property of the company should be insufficient to cover all charges occasioned by completing the works, the contractor was to make good the deficiency. The question before the House of Lords was whether having taken possession the company became absolutely entitled to all which they seized or whether the whole provision was not to be regarded as more machinery for enabling them to complete the works at the risk and costs of the contractor. It was held that the latter was the true construction of the clauses and that the true meaning of that part of the contract was that the company though at liberty to seize and appropriate the plant belonging to the contractor were yet bound to account for its value in settling their accounts with him.

The provision in Clause 8 of the Bill as now drafted is for taking over not absolutely that is for eger but for some period, which may be the same as or shorter or longer than the period during which the scheme is in force. The intention to take away the property of a subject without giving him a legal right to compensation for the less of it is not to be imputed to the Legislature unless that in tention is expressed in equivocal terms In the Privy Council case of Union of South Africa Vs. Simmer & Jack-properietpry Mines 1918 A.C. page 591 the Executive Council of the Transval Republic by a resolution expropriated for

purposes certain lands in which the Government has granted the mining rights which under Statute were held independently of the ownership of the soil. Under the Transval Gold Law of 1885 rights could be withdrawn upon payment of compensation; the resolution provided no compensation for the loss of mining rights- It was held that the terms of the resolution being ambiguous the resolutinn should be construed as not effecting an expropriation of mining rights since no compensation for them was provided. In the Judgement of Lord Summer it was stated that general or ambiguous words should not be used to take away legitimate and valuable rights from the subject without compensation, if they are reasonably capable of being construed so as to avoid such a result consistently with the general purposes of the transaction and their Lordships of the Judicial Committee came to the conclusion that the mining rights in the ground vertical under the railway were not expropriated.

The provision in the Bill providing that whenever in pursuance of sub-section 2 of the Section 8, the Commissioner takes over any lands the water rate leviable under the Bombay Irrigation Act 1879 in respect of such lands shall not be recoverable from the defaulting owner during the period for which the lands have been taken over, also indicate that what is intended by sub-section 2 of Section 8 is not a forfeiture.

I am afraid on a proper construction of the Bill as now drafted it would be held that what is intended to be done is not forfeiture but requisition. Requisition is employment of some sort of some property by the Government for Government purpose. If this consturction is put upon the Bill, I am afraid the provisions of Section 299(2) of the Government of India Act 1935 would be attracted and the section would be held to be ultra vires, as no compensation is provided for.

The object which the Government have in view can in my opinion be carried out by adopting any one of the following methods:-

1. A provision may be made for absolute forfeiture accompained by another provision providing for releif against the forfeiture and restoration of the land on such terms and conditions as may be imposed. This provision will be somewhat similar to that contained in section 114 of the Transfer of Property Act which provides for releif for forfeiture for nopayment of rent. Of course that provision applies where a lessor sues for possession after he has determined the lease for forfeiture but before possession is obtained. The position in this case will not be the same. But there is nothing to prevent the Bill providing for absolute forfeiture with a provision that subsequently the forfeiture may be relieved against and the land restored.

2. A provision may be made for taking over the land for a specified period and providing for compensation being paid to the owner. The amount of the compensation may be fixed and principles laid down according to which the compensation is to be fixed.

3. A provision may be made for taking over the land for a specified period and it may be provided that the amount if any which may be found due to the owner as the result of the management may be paid to him, the accounts kept by the manager being held to be binding on the owner and to be conclusinve and binding on him.

Sd/-

Advocate General.

M.R.D.
13-756
C.4

Office of the R.L.A.

The draft Bill provides a mechinary which can aptly be used either for seasonal scheme or for schemes covering moare seasions than one, whichever R.D. thinks is suitable generally or in individual cases. In case of the latter, the draft scheme under section 4 will doubtless specify not only the period during which the scheme shall be in force but also a sort of time table for seasonal crops. Sections 4,5 and6(1) deal with the original scheme, preparation thereof, sanction thereto, publication thereof; and upon publication the irrigation and cultivation of land under command must be carried out in accordance with the scheme. Sections 7 and 8 prescribe the procedure for enforcing the scheme. The Commissioner's power under section 9(1) is wide enough to authorise variation of the scheme in respect of any of the details specified in section 4(1), and section 9(2) provides that any such variation shall be published in the manner laid down in section 6, and from the date of such publication the variation shall take effect as if it were incorporated in the scheme. The effect of the underlined words is that sections 6(2), 7 and8, though enacted primarily with reference to the scheme originally sanctioned and published, apply to the scheme as varied from time to time by the Commissionar under section 9.

2. The variations to be made by the Commissioner under section 9 are in the nature of modifications only; they will not include a substitution of a seasonal scheme by a scheme covering more seasons than one. If only a seasonal scheme is started with a defaulter's contravention of the seasonal scheme of one season cannot be held to amount to a contravention of the next season's seasonal scheme as well. Punishment for the first contravention should therefore be properly limited to the period of the firist scheme. If a series of crop-season are to be controlled, the clear course is to have a multi-seasonal scheme with a time table showing for each season separately all the details specified in clause4(i)of

..., clause 8(2)leavies it to the discretion of the Commissioner to refuse to restore the forfeited land at the end of the period of the scheme; and the Commissioner may hold over till the next scheme is over,

3. In the present clause8(3), the expression "and for such period as the Commissioner may direct" was intended to enable restoration even before the scheme period is over under clause(b)of the second proviso. The intention so far was that contravention of one scheme should result in the loss of land for the perod of that scheme, and should not operate as a contravention of all schemes thereafter. If however R.D.'s intention now is to penalise a defaulter by taking over the lands for the purposes of all further schemes, clause 8(2) may be amended as shown in pencil on page 165 ante. No amendment in any other clause appears necessary.

Sd/-P.N.M.
Remembrancer of Legal Affairs.

U.R. to R.D.No. 1936,dated the 14th March 1944.

M.R.D.
13-7-56
C.4

VERY URGENT.

Legal Department,
Bombay Castle, 22nd August 1944.

From.

P.N.MOOS, Esquire, Bar-at-Law I.C.S.
Secretary to the Government of Bombay;

To.

The Secretary to the Governor of Bombay.

Subject:- The Bombay Irrigated crop Regulation Bill, 1944.

Sirm,

With reference to your memorandum No.201(98) dated the 11th June 1944, addressed the Revenue Department on the above subject. I am directed to forward herewith for the assent of His Excellency the Governor a copy of the Bombay Irrigated Crop Regulation Bill, 1944, prepared by His Excellency the Governor under paraggraph(2) of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause(a),(b),(c),or(d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The Subject-matter of the Bill falls under entires 2,9,19,20,21,27 and 39 of the provincial Legislative List in the Seventh schedule to the Government of India Act, 1935. As the Bill does not relate to any matter in the Concurrent Legislative List, it is not necessary to reserve it for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935 or paragraph(2z) of the Proclamation.

4. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

5. I also forward herewithone spare copy of the

P.T.

Sd/-

Your obedient Servant

Sd/-
22.8.44

Secretary to the Government of Bombay.
Legal Department.

Through-

The Secretary to the Government of Bombay,
Revenue Department.

MR.D.
13-7-56
C.4

Very urgent-.

No. 201(98)
Officeof thex Governor's Secretary,
Government House,
Ganeshkhind, 23rd August, 1944.

From;-

D.Symington, Esquire, CIE,ICS.
Secretary to the Governor of Bombay.

To

The Secretary to Government,
Legal Department, Bombay,

Subject:- The Bombay Irrigated Crop Regulation Bill, 1944.

Sir,

With reference to your letter No.54-L, dated the 22nd August 1944, I am directed to forward herewith the copy of the Bombay Irrigated Crop Regulation Bill, 1944 prepared by His Excellency the Govenrnor under paragraph(2) of the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph, His Excelllency the Governor is pleased to declare that he assents to the Bill in the name of his Majesty.

Your obedient servant,
Sd/-
Secretary to the Governor of Bombay.

M.R.D.
13-7-56
C.4

Publicationof the Bombay
Irrigated Crop Regulation Act, 1944.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 5926-L
Bombay Castle, 25th August 1944.

Letter to the Secretary to the Governor, No.54-L, dated the 22nd August 1944.

Letter from the Secretary to the Governor, No.201(98), dated the 23rd August 1944.

"With reference to your letter No.54-L, dated the 22nd August 1944, I am directed to forward herewith the copy of the Bombay Irrigated Crop Regulation Bill, 1944, prepared by His Excellency the Governor under paragraph(2) of the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph His Excellency the Governor is pleased to declare that he assents to the Bill in the name of His Majesty."

RESOLUTION.- The law should be published as Bombay Act No-XII of 1944 in the Bombay Government Gazett dated the 25th August 1944.

2. The Act should be translated in to Marathi, Gujarati, Kannada and Hindustani(in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department.

By order of the Governor of Bombay
Sd/-
For { P.N.MOOS,
Secretary to Government.

To
The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department).
The Revenue Department .
*The Oriental Translator to Government. } with a copy of the Act.
The Secretary to the Bombay Legislative Assembly
The Secretary to the Bombay Legislative Council.

*With five extra copies.

1/12
B17 L56

Bom. Act XII

GOVERNOR'S BILL No. XIII OF 1944.

A Bill to provide for the maximum cultivation of, and the maximum use of water in, lands under command of irrigation works in the Province of Bombay and for increased cultivation of food crops in such lands.

WHEREAS it is expedient to provide for the maximum cultivation of, and the maximum use of water in, lands under command of irrigation works in the Province of Bombay and in particular for the increased cultivation of food crops in such lands;

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature;

26 Geo. 5, Ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Irrigated Crop Regulation Act, 1944.

(*2*) It extends to the whole of the Province of Bombay.

(*3*) It shall come into force in such area and on such date as the Provincial Government may, by notification in the *Official Gazette*, direct.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

Bom. VII of 1879.

(*1*) "irrigation work" means a canal as defined in the Bombay Irrigation Act, 1879, in respect of the use of water from which a rate is leviable under the said Act;

(*2*) "land under command" means land referred to in clause (*iii*) of sub-section (*1*) of section 4;

Bom. V of 1879. Bom. I of 1880. Bom. XXIX of 1939.

(*3*) "owner" includes an owner in severalty, in common or joint, a holder and a tenant as defined in the Bombay Land Revenue Code, 1879, a privileged occupant as defined in the Khoti Settlement Act, 1880, a tenant who is deemed to be a protected tenant under section 3 of the Bombay Tenancy Act, 1939, and a mortgagee in possession;

(*4*) "prescribed" means prescribed by rules made under this Act;

(*5*) "Scheduled crop" means a crop specified in the Schedule annexed to this Act;

Bom. VII of 1879.

(*6*) the words and expressions used in this Act, but not defined, shall have the meaning assigned to them in the Bombay Irrigation Act, 1879.

Commissioner to direct preparation of scheme.

3. Whenever it appears to the Commissioner that it is necessary to provide for the maximum cultivation of any areas irrigable by means of water from any irrigation work, or for the maximum use of water or increased cultivation of food crops in such areas, he may direct a Canal Officer or any other officer whom he may appoint in this behalf to prepare a scheme for being enforced over such period as the Commissioner fixes in this behalf.

Details of scheme.

4. (*1*) On a direction being given under section 3, the officer directed under the said section shall prepare and submit to the Commissioner a scheme containing the following particulars, namely :—

(*i*) The period during which the scheme shall be in force.

(*ii*) The name of the irrigation work.

(*iii*) Details of the area and land under command, that is to say, survey numbers which are irrigable during the period of the scheme by means of water from the irrigation work.

(*iv*) Names of the owners of the land under command.

(*v*) The latest date before which water shall begin to be taken from the irrigation work.

(*vi*) Details of the survey numbers out of the land under command in which crops other than the scheduled crops may be grown.

(*vii*) The latest date before which the scheduled crops shall be sown in the land under command excluding the survey numbers referred to in clause (*vi*).

(*viii*) Such other particulars as may be prescribed.

(*2*) The decision of the officer preparing the scheme under sub-section (*1*) as to whether any survey number is land under command of the irrigation work for the duration of the scheme shall, subject to any orders which may be passed by the Commissioner in any particular case, be final.

Commissioner to sanction scheme.

5 The Commissioner may, if he approves of the scheme submitted to him under section 4, sanction it with or without such modifications as he may deem fit.

Publication and effect of scheme.

6. (*1*) The scheme sanctioned by the Commissioner under section 5 shall be published in the villages concerned and at the headquarters of the taluka or mahal within the limits of which the lands included in the scheme are situate.

(*2*) On and from the date on which the scheme is published under sub-section (*1*), irrigation and cultivation of all lands under command shall be carried out in accordance with the scheme for the period during which the scheme is in force.

7. After the scheme has been published under section 6 the officer who prepared it shall give a general notice in the prescribed manner to all the owners of the lands included therein— Notice to execute scheme.

(*a*) specifying the survey numbers which are decided as comprising the land under command of the irrigation work specified in the scheme ;

(*b*) directing them to begin to take water before the date appointed therefor under section 4 for irrigating the lands under command from the said irrigation work in accordance with the procedure laid down in the Bombay Irrigation Act, 1879, and the rules made thereunder ;

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(*c*) specifying the survey numbers out of the land under command in which crops other than the scheduled crops may be grown ; and

(*d*) directing them to sow the scheduled crops in the survey numbers out of the land under command not specified under clause (*c*) before the date appointed therefor under section 4.

8. (*1*) After a notice under section 7 is given all owners of lands under command shall comply with the directions given in the said notice. Obligation on owners to comply with notice and penalty for failure.

(*2*) If any owner of land under command, in contravention of the directions given in the said notice, fails to begin to take water for irrigation of such land from the irrigation work specified in the scheme before the date appointed therefor under section 4, or fails to sow the scheduled crops in the appropriate survey numbers before the date appointed therefor under section 4, he shall, on conviction, be punished with forfeiture of all or any part of his land included in the said scheme together with standing crops, if any.

(*3*) The Commissioner may restore the forfeited lands—

(*a*) when they cease to be included in any scheme made under this Act, or

(*b*) if the defaulting owner gives an undertaking to cultivate the lands in accordance with the scheme in force at any time,

on such terms and conditions as the Commissioner may determine.

9. (*1*) If after a scheme has been published under section 6, the Commissioner considers that any further variation thereof is necessary he may make such variation. Power to vary scheme.

(*2*) Any such variation made by the Commissioner shall be published in the manner laid down in section 6 and from the date of such publication the variation shall take effect as if it were incorporated in the scheme.

Right of entry.

10. For the purpose of preparing, sanctioning or carrying out any scheme, any person authorised by the Commissioner may enter upon, survey and mark out such land and do all acts necessary for such purpose.

Delegation of powers by Commissioner.

11. The Commissioner may delegate any of the powers conferred on him under this Act to the Collector.

Protection of persons acting in good faith.

12. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act.

Rules.

13. (*1*) The Provincial Government may by notification published in the *Official Gazette* make rules for the purpose of carrying into effect the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power such rules may provide for the following matters, namely :—

(*i*) the other particulars to be prescribed under clause (*viii*) of sub-section (*1*) of section 4 ;

(*ii*) the manner of giving notice under section 7.

(*3*) The power to make rules under this section shall be subject to the condition of previous publication.

Schedule.

English name.	Vernacular names.		
	Marathi.	Gujarati.	Kannada.
A. KHARIF.			
(a) Cereals.			
Great Millet	Jowar or Jondhala.	Jowar ...	Jola.
Spiked Millet	Bajri ...	Bajra ...	Shejji.
Maize	Maka ...	Makai ...	Goinjola.
Finger Millet	Nagli or Nachni .	Bavte ...	Ragi.
Italian Millet	Rala ...	Kang ...	Navni.
Kodra Millet	Hareek ...	Kodra ...	Hareek.
Paddy	Bhat ...	Dangar ...	Bhatta.
	Vari ...	Moriu ...	Baragu.
(b) Pulses.			
Pigeon Pea	Tur ...	Tuer ...	Togari.
Green Gram	Mug ...	Mug ...	Hesaru.
Kidney Beans	Matki ...	Math ...	Madaki.
Black gram	Udid ...	Adad ...	Uddu.
Indian Bean	Wal ...	Wal ...	Avare.
Cow peas	Chavli ...	Chola ...	Alsandi.
Horse gram	Kulthi ...	Kulthi ...	Burali.
(c) Vegetables.			
Vegetables of all kinds.			

Schedule—contd.

English name.	Vernacular names. Marathi.	Gujarati.	Kannada.
A. KHARIF—*contd.*			
(d) Fodders.			
Great Millet ...	... Jowar	... Jowar	... Jola.
Maize ...	... Maka	... Makai	... Goinjola.
Lucerne ...	... Lusanghas	... Rajko	... .
(e) Other Crops.			
Chillies ..	.. Mirchi	... Marcha	.. Mensinkai.
B. RABI.			
(a) Cereals.			
Great Millet ...	... Jowar	... Jowar	... Jola.
Paddy ...	... Bhat	... Bhat	... Bhatta.
Wheat ...	... Gahu	... Gehu	... Godi.
Maize ...	... Maka	... Makai	... Goinjola.
Barley ...	... Java	... Java	... Javegodi.
Spiked millet ...	... Bajari	... Bajra	... Shejji.
(b) Pulses.			
Pigeon Pea ...	... Tur	... Tuer	... Togari.
Pea ...	... Vatana	... Vatana	... Batgadli.
Gram ...	... Harbara	... Chana	... Kadli.
Beans ...	... Wal	... Wal	... Avari.
Lentil ...	... Masur	... Masur	... Channangi.
Chikling Ketch ...	... Lakh	... Lang	... .
(c) Vegetables.			
Vegetables of all kinds.			
(d) Fodders.			
Great Millet ...	... Jowar	... Jowar	... Jola.
(e) Other Crops.			
Onion ...	... Kanda	... Dungli	... Ullagaddi.
Oats ...	... .	.....	... Tekegodhi.

STATEMENT

Bombay is a deficit province so far as the production of food-grains required for its population is concerned. Before the war, Bombay had to import 20·3 per cent. of its rice from Burma and 15·8 per cent. of its wheat, 3·6 per cent. of its jowar and bajri from various parts of India.

2. The Burma imports are temporarily cut off and will not be available till a year or two after the end of the war. Similarly, the heavy demands on railway transport made by Defence Services and the shortage of wagons and petrol make inter-provincial movements of food-grains extremely difficult. It is, therefore, imperative to undertake an all-out drive for production of food-grains within the Province.

3. The difference in yield between irrigated and non-irrigated land under food crops is estimated to be as high as 100 per cent., and one effective way of increasing the production of food-grains within the Province is to bring as large an area as possible under irrigation and cultivate food crops therein. Past experience in the management of irrigation works has, however, shown that the cultivator prefers to gamble in rains and an assured supply of water is very often not utilized except for heavy crops like sugarcane. It is, therefore, necessary to secure larger production of food-grains by (1) securing the maximum cultivation of, and the maximum use of water in, lands under command of irrigation works and (2) providing for increased cultivation of food crops in such lands and for taking them over for cultivation by Government in the event of the failure of the owner (*a*) to take water from irrigation works or (*b*) to grow specified food crops in the area under irrigation. The Bombay Irrigated Crop Regulation Act is designed to secure these objects.

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